

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF MISSISSIPPI
GREENVILLE DIVISION**

**UNITED STATES FOR USE AND
BENEFIT OF KEWAUNEE SCIENTIFIC
CORPORATION**

PLAINTIFF

V.

CASE NO. 4:05 CV 276

**PRYOR & FRAZIER CONSTRUCTION,
INC., and ST. PAUL FIRE AND MARINE
INSURANCE COMPANY**

DEFENDANTS

ORDER

This cause comes before the court on the defendants' motion [5] to compel arbitration and stay the instant proceedings pending arbitration. The defendants have filed this motion in accordance with the arbitration clause in the contract between the parties as well as the Mississippi Construction Arbitration Act, *Miss. Code Ann.* §§11-15-101 through 11-15-143. The plaintiff has not responded to the motion; however, the court has considered the defendants' submissions as well as the complaint filed by the plaintiff in reaching its determination.

Section 6.2.1 of the subcontract between the parties reads:

Any claim arising out of or related to this Subcontract, except claims as otherwise provided in Subparagraph 4.1.5 and except those waived in this Subcontract, shall be subject to arbitration. Prior to arbitration, the parties shall endeavor to resolve disputes by mediation in accordance with the provisions of Paragraph 6.1.

Section 4.1.5 reads:

The Subcontractor agrees that the Contractor and Architect will each have the authority to reject work of the Subcontractor which does not conform to the Prime Contract. The Architect's decisions on matters relating to aesthetic effect shall be final and binding on the Subcontractor if consistent with the intent expressed in the Prime Contract.

Paragraph 10 of the plaintiff's complaint alleges that Pryor & Frazier accepted all of Kewaunee's work, ostensibly putting Kewaunee's claim within Section 6.2.1 of the Subcontract. Further, an order compelling arbitration is in accordance with the Mississippi Construction Arbitration Act, *Miss. Code Ann. §11-15-101 et. seq. Construction Services, Inc. v. Regency Hospital*, Civil Action No. 4:06cv126, slip op. at 2 (S.D. Miss. Nov. 8, 2006). §11-15-105 states that any party to an agreement or provision for arbitration subject to §11-15-101 through §11-15-143 claiming the neglect or refusal of another party thereto to comply therewith may make application to the court as described in sections 11-15-133 and 11-15-135 for an order directing the parties to proceed with arbitration in accordance with the terms of such agreement or provision. If the court finds that no substantial issue exists as to the making of the agreement or provision, it shall grant the application. *Construction Services*, slip op. at 3. As neither party has raised any issues as to the making of the agreement and each page of the Subcontract has a disclaimer warning of the important legal consequences associated with the document, this court finds that the defendants' motion [5] should be GRANTED.

This the 28th day of November, 2006.

/s/ Michael P. Mills
UNITED STATES DISTRICT JUDGE